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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,856	05/13/2005	Georg Wanninger	1291.1000	8982

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THE CULBERTSON GROUP, P.C.
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SUITE 420
AUSTIN, TX 78746

EXAMINER

ADAMS, GREGORY W

ART UNIT	PAPER NUMBER
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3652

MAIL DATE	DELIVERY MODE
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07/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,856	Applicant(s) WANNINGER ET AL.	
	Examiner Gregory W. Adams	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 39-40, 42-45 & 49-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Wise (US 4,538,511) (previously cited).

With respect to claims, Wise discloses an apparatus including:

- (a) a rear wall with 37 a lower end and an upper end, a rear wall running in a direction Z which is essentially vertically aligned in an initial position of an apparatus;
- (b) a foot element 48, 91 in a first position adjacent to a lower end of a rear wall to support a product stack arranged on a first transport element, a foot element being movable between a first position (FIG. 5) and a second position (FIG. 14), a second position being relatively further from an upper end of a rear wall as compared to a first position;
- (c) a fastening cover 45 located at an upper end of a rear wall, a fastening cover being moveable relative to a first position of a foot element for clamping a product stack in a direction Z between a fastening cover and a foot element; and
- (d) a first clamping jaw 54 located at a right side of a rear wall and a second clamping jaw 54 located at a left side of the rear wall, a first clamping jaw and

second clamping jaw each being moveable independently of a foot element and fastening cover to clamp a product stack between a right side of a product stack and a left side of a product stack.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Postlewaite (US 3,123,232) (previously cited) in view of Moen (US 4,696,614).

With respect to claims 33, 34, 35, 37, 38, Postlewaite discloses a method for changing a transport element under a stack of products, the method including:

- (a) fastening a product stack between a first transport element 12 at a lower end of a product stack and a fastening cover 56 at an upper end of a product stack opposite a lower end, a product stack resting in an initial position (FIG. 2) on a first transport element and a first transport element lying on a foot element 36;
- (d) replacing a first transport element with a second transport element;
- (e) after a first transport element is released and replaced with a second transport element, displacing a foot element back toward a lower end of a product stack to place a second transport element against a lower end of the product stack; and

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- (f) after a second transport element is placed against a lower end of a product stack and removing a cover.

Postlewaite does not disclose the clamping a stack between two opposite side surface clamping jaws. Moen discloses-

- (b) independently of fastening a product stack between a first transport element and a fastening cover, clamping a product stack between at least two additional opposite side surfaces thereof with two clamping jaws P;

- (c) while maintaining a product stack clamped with two clamping jaws P, displacing a foot element away from a lower end of the product stack so that a first transport element is released; and

- (f) removing clamping jaws P from opposite side surfaces and removing

Moen teaches improved side clamping prevents damage to a stack while maintaining said stack in alignment during rotation of full pallet loads. C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Postlewaite to include side clamps, as per the teachings of Moen, to reduce box damage during pallet to pallet transfer of stacked loads.

With respect to claim 36, Postlewaite discloses a product stack that rests against a rear wall 33, 47 when in the tilted position, a rear wall being separable in a plane defined thereby into two rear wall elements, and further including separating a two rear wall elements when a product stack is in a tilted position to divide a stack.

Claims 41 & 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wise in view of Postlewaite (US 3,123,232) (previously cited).

With respect to claim 41, Wise does not disclose two rear wall elements.

Postlewaite discloses two rear wall elements 33, 47 movable relative to one another to move a transport element such that a stack of different materials, types or ownerships may be transferred from one pallet to another. C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Wise to include two rear wall elements movable relative to one another, as per the teachings of Postlewaite, to improve on pallet to pallet transfer.

With respect to claims 47-48 Wise does not disclose 180 degrees of tilting via a drive. Postlewaite discloses a drive 30, 31 to rotate about 120 degrees to 200 degrees such that none of the weight rests on a pallet 12 such that various pallet owners may receive their respective pallet. C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Wise to include Postlewaite's drive and 180 degrees of tilt to allow owners to receive their respective pallet type with their respective load.

Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wise in view of Thompson et al. (US 3,724,089) (previously cited). Wise does not disclose a vibrating element. Thompson et al. disclose a vibrating element 82 to aid in alignment of stacked items in a reclined position greatly enhancing the edge-aligning feature. C4/L15. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Wise to include a vibrating element, as per the teachings of Thompson et al., to improve on edge alignment of stacked goods.

Response to Arguments

Applicant's arguments with respect to claims 33-52 have been considered but are moot in view of the new ground(s) of rejection. Applicant canceled previously examined claims 17-32.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

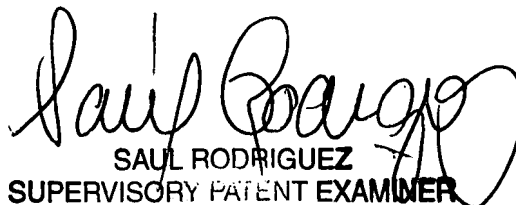
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th, 8:30am-5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GWA


SAUL RODRIGUEZ
SUPERVISORY PATENT EXAMINER